

MAY 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YVONNE CUMMINS,

Plaintiff - Appellant,

v.

SOCIAL SECURITY
ADMINISTRATION; et al.,

Defendants - Appellees.

No. 06-17281

D.C. No. CV-05-03639-NVW

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted May 20, 2008 **

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Yvonne Cummins appeals pro se from the district court's summary
judgment upholding the Social Security Administration ("SSA") Commissioner's

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

calculation of her monthly benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's order de novo. *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). The Commissioner's decision will be set aside only if it is not supported by substantial evidence or if it is based on legal error. *Id.* We affirm.

The district court properly deferred to the agency's interpretation of 42 U.S.C. § 415(f). *See Foothill Presbyterian Hosp. v. Shalala*, 152 F.3d 1132, 1134 (9th Cir. 1998) (explaining that the court "will defer to the agency's interpretations unless an alternative reading is compelled by the plain language of the regulation or by other indications of the agency's intent at the time it promulgated the regulation").

Contrary to Cummins's contentions, the SSA had authority to recalculate her primary insurance amount when she converted from disability to retirement benefits and when her eligibility date changed. *See* 42 U.S.C. § 415(a)(2) (providing for recalculation of benefits based on a change from disability to retirement benefits); 20 C.F.R. § 404.290 (providing for recalculation based on a change in eligibility status).

Cummins's contentions that the SSA violated her due process rights lack merit because there is no indication that she was deprived of an "opportunity to be

heard at a meaningful time and in a meaningful manner.” *See Boettcher v. Sec’y of Health and Human Servs.*, 759 F.2d 719, 723 (9th Cir. 1985).

AFFIRMED.